



# Guideline

## Income Tax Adjustment for Income (Loss) From A Pass-Through Entity Subject to N.D.C.C. ch. 57-35.3

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Tax Commissioner

### Introduction

This guideline explains the adjustment under N.D.C.C. §§ 57-38-01.2(1)(t) and 57-38-30.3(2)(c). The adjustment applies to an individual, estate or trust that derives income or a loss from an S corporation, partnership, or limited liability company (LLC) that is subject to North Dakota's financial institution tax under N.D.C.C. ch. 57-35.3. In the case of an LLC, the adjustment applies only if the LLC is treated like a partnership for federal income tax purposes. The purpose of the adjustment is to remove the income or loss from the computation of the North Dakota taxable income of the individual, estate or trust so that the income is not taxed twice, or the loss is not deducted twice, for North Dakota tax purposes—first, under the financial institution tax provisions and, second, under the income tax provisions. Throughout the remainder of this guideline, an S corporation, partnership or LLC will be referred to as a pass-through entity.

If uncertain about whether a pass-through entity is subject to North Dakota's financial institution tax under N.D.C.C. ch. 57-35.3, an individual, estate or trust should contact the pass-through entity. See **Member Statement** below for more information.

### Adjustment amount

The adjustment amount is equal to the individual's, estate's or trust's distributive share of the pass-through entity's income or loss allocated and apportioned to North Dakota for financial institution tax purposes with certain modifications. The modifications are required to remove certain adjustments that the pass-through entity made in determining its income or loss for North Dakota financial institution tax purposes. If there are modifications, or if the pass-through entity does not allocate and apportion 100 percent of its net income or loss to North Dakota for financial institution tax purposes, the adjustment amount will differ from the amount of income or loss reported on the federal income tax return of the individual, estate, or trust.

The adjustment amount will decrease or increase the individual's, estate's, or trust's North Dakota taxable income depending on whether the pass-through entity has a net income or loss, respectively, for North Dakota financial institution tax purposes. See **How to report adjustment amount** below for more information.

**Determination of adjustment amount by pass-through entity.** The pass-through entity must determine the adjustment amount for each member holding an interest in the pass-through entity's earnings or losses. It must provide this information to its members at the end of each calendar year. See **Member Statement** below for more information.

**Note to pass-through entity:** Instructions on how to calculate the adjustment amount are contained in the instructions to Form 35.

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## Member statement

The pass-through entity must provide each individual, estate or trust member holding an interest in the pass-through entity's earnings or losses with a statement containing the following:

- Name, address, and federal employer identification number of the pass-through entity.
- Calendar year for which the statement is provided.
- The adjustment amount, identified as "N.D.C.C. ch. 57-35.3 adjustment," applicable to the individual, estate or trust member.
- Instructions to the individual, estate or trust member explaining the purpose of the statement and containing a reference to this guideline.

The member statement must be prepared and given to each individual, estate or trust member on or before the due date or extended due date of the North Dakota financial institution tax return. The individual, estate or trust must attach a copy of the member statement to its North Dakota income tax return to support the adjustment made on the return. The member should also keep a copy.

**Alternative to member statement.** As an alternative to providing a separate member statement, the pass-through entity may report the information required to be included in the member statement in the supplemental information section of the Federal Schedule K-1 that it provides to each individual, estate or trust member. The information must be clearly identified as North Dakota tax information, with an instruction that it is important to the preparation of the member's North Dakota income tax return.

## How to report adjustment amount

The adjustment amount must be reported for North Dakota income tax purposes in the same tax year in which the individual, estate or trust member's distributive share of the pass-through entity's income or loss is reported for federal income tax purposes.

If a member is an individual, the member must report the adjustment amount on the appropriate line of Form ND-1 or Form ND-2, whichever is used. If the member is an estate or trust, the member must report the adjustment on the appropriate line of Form 38, Schedule 1 or Schedule 2, whichever is used.

**Income adjustment.** If the adjustment amount is positive (i.e., it consists of the pass-through of net income), it must be subtracted from federal taxable income in determining North Dakota taxable income. In this case, enter the adjustment amount as a subtract adjustment on the applicable return.

**Loss adjustment.** If the adjustment amount is negative (i.e., it consists of the pass-through of a loss), it must be added to federal taxable income in determining North Dakota taxable income. In this case, enter the adjustment amount as an addition adjustment on the applicable return.

## Need help?

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